IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 17285 of 2006
Date of decision : 2-11-2006

The Chief Engineer, Pb. PWD(B&R) Patiala,
and others … Petitioner

Versus

Workman Mukhtiar & another … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Ms. Nirmaljit Kaur, Addl. A.G. Punjab,
for the petitioner

…

ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 23.11.2005 Annexure P-5, vide which the learned Labour Court, Bathinda, has set aside the order terminating the services of respondent No.1-workman and ordered his reinstatement with continuity of service along with 40 per cent back wages from the date of demand notice.

As per case set out by the petitioner-department, it employed respondent-workman as Sweeper with effect from 13.3.1990 to 26.2.1998 on purely temporary basis or on Muster Roll on different periods at D.C. Rates. Thereafter, his services stood automatically terminated being only for a limited period. However, later he raised an industrial dispute by way of demand notice served on the petitioner-department seeking reinstatement. The matter was then referred by the Government to the Labour Court for adjudication. Workman filed claim petition before the Labour Court stating that his services were terminated on 26.2.1998 without any notice, charge-sheet, enquiry or retrenchment compensation and therefore, the same is

illegal and against the provisions of law. He further stated that at the time of terminating his services, juniors to him were retained. Upon notice of the claim statement, the department took the plea that the workman was not their regular employee but a daily wage worker against muster rolls. It was further pleaded that it was the workman who did not turn up to do his duty. It was denied that any persons junior to the workman had been appointed.

In support of their respective case, evidence was led by the parties.

The learned Labour Court on appreciation of evidence led by the parties, passed the impugned award in the manner indicated above. Hence, the present petition by the department.

We have heard the learned counsel for the petitioner-department.

The question arises as to whether respondent-workman had completed 240 days preceding 12 calendar months from the date of termination. No doubt, to prove the same the onus is on the workman. However, this issue is no more resintegra. The case of the respondent-workman is that he continuously worked form 1.3.1990 till his services were terminated on 26.2.1998. Petitioner-department could not controvert the same by any cogent evidence. Rather, a bare perusal of the impugned award shows that the petitioner's own witness, i.e. MW-1 Adesh Gupta, SDE, admitted that the workman had worked for 301 days preceding 12 calendar months. He had deposed it on the basis of musterr-rolls, Exhibits M-43/2 to M-43/53 (before the Labour Court). Once it is so, respondent-workman was entitled to protection under Section 25 of the Act. Admittedly, there was no such compliance. Thus, the Labour Court has rightly held that on account of non-compliance of Section 25-F of the Act,the termination of workman was illegal and not sustainable. Moreover, it is only a bald plea taken by the petitioner-department that the workman had abandoned the job. Petitioner-department is heavily burdened to prove the said plea by leading cogent evidence but nothing has been produced either before this Court or before the Labour Court to substantiate the said plea.

Learned State counsel has next argued that the respondent-workman has not adequately proved the plea of remaining idle during the

remaining period and as such, grant of back-wages by the Labour Court to the extent of 40 per cent is excessive and has referred to a judgment of the Hon'ble Supreme Court in G.M. Haryana Roadways v. Rudhan Singh, 2005 (5) SCC 591. In Rudhan Singh's case(supra), one of the important factors for the denial of back-wages was the length of service which was less than a year, which is not the case here.

In Noida and another v. Hari Dutt, 2006 SCC (L&S) 1083, the Labour Court had directed payment of back-wages of 50 per cent which were raised to full back wages by the High Court. The Hon'ble Supreme Court set aside the decision of the High Court and confirmed the award of the Labour Court.

In Allahabad Jal Sansthan v. Daya Shankar Rai and another, 2005(5) SCC-124, it has been held by the Hon'ble Supreme Court that it is necessary to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered, but the golden mean may be arrived at, and opined that interest of justice would be subserved if the workman is awarded 50 per cent of back-wages. Therefore, applying the norms laid down by the Hon'ble Apex Court, the grant of 40 per cent back-wages from the date of demand notice in this case is not excessive in any manner.

No other point has been urged.

In view of what has been stated above, we are of the opinion that the learned Labour Court has rightly answered the reference. We do not find any infirmity with the award passed by the Labour Court which is just and reasoned. Accordingly, the petition being without any merit is dismissed in limine.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

October 31, 2006
JS